



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

April 2014

Volume 176

Professor Loses Age Discrimination Lawsuit

Andrew Ortony was a professor of psychology, computer science and education at Northwestern University. In 2007, he asked his dean, Penelope Peterson, if he could have a year's leave to teach at another university. Peterson made a counter-offer: he could have paid leave during the calendar year 2008 and the academic year 2011-2012, if he agreed to teach during the intervening time and then retire. Dean Peterson sent Prof. Ortony a letter that said she was accepting his resignation effective August 31, 2012. The letter detailed when he would be teaching and when he would be on paid leave. Prof. Ortony signed this letter on June 25, 2007.

In 2011, the university administration reminded Prof. Ortony that his final year on the tenured faculty would be on leave with pay, and that he would assume unpaid emeritus status on August 31, 2012, as the letter specified. He balked. He said that he did not want to retire and had not agreed to do so. He filed a complaint of age discrimination in employment under the Age Discrimination in Employment Act (ADEA), and lost.

As the Court noted, "the ADEA entitles employees to continue working as long as they can perform the job satisfactorily, but it allows them to trade this right for something they value more, such as retirement packages." The Court said that Northwestern had not terminated Ortony's employment. Rather, it bought out

his tenure by promising him five years of pay for three years of work, and he accepted that offer in 2007.

Ortony argued that offering retirement packages only to older people is a form of age discrimination. The Court said if that argument was successful, "then all retirement (and early retirement) offers violate the ADEA, because employers don't make such offers to newly-hired employees." Retirement packages are a benefit of age, not a penalty.

Ortony also argued that he understood the letter he signed to set out a plan under which he could retire, if he so chose, after five years. The Court said that his understanding of what the agreement said did not matter, as the letter clearly said he would retire on August 31, 2012. The Court said that Ortony's understanding of the agreement would be quite one-sided; Northwestern would give him full pay for two years for doing no work, while he did not promise anything in return.

The case is Ortony v. Northwestern University, 2013 WL 6234101 (7th Cir. 2013). If you have questions about fair employment laws, please contact the BHRC.

BHRC Staff

Barbara E. McKinney,
Director

Barbara Toddy,
Secretary

Commission Members

Byron Bangert, Chair

William Morris, Vice Chair

Michael Molenda,
Secretary

Carolyn Calloway-Thomas

Valeri Haughton

Beth Applegate

Birk Billingsley

Mayor

Mark Krizan

Corporation Counsel

Margie Rice

BHRC
PO BOX 100
Bloomington IN
47402
349.3429
human.rights@
bloomington.in.gov



Is a Prisoner an Employee?

William Castle was convicted of theft and perpetuating a scheme to defraud in violation of Arizona law. He was given a ten-year prison sentence.

Under Arizona law, all able-bodied inmates have to "engage in hard labor for not less than forty hours a week." Most inmates fulfill this requirement by working in the state's work incentive pay program, earning between ten and fifty cents an hour working within the prison. Some, including Castle, work for private companies. Castle was employed by Eurofresh, where he picked tomatoes at a greenhouse about 60 miles from his prison. He was paid \$2.25 an hour for this job. Castle's job required him to be on his feet during his entire seven-hour shift and often to push a tomato cart that weighed

600 pounds. In late 2008, he began experiencing "intolerable pain and swelling" in his left ankle after working for more than two hours at Eurofresh. He asked his supervisor if he could take breaks and was told he would be fired if he insisted on breaks. He saw a doctor at the prison, who told him to request a job change or accommodation.

Castle did so, telling both the prison and Eurofresh that because of his ailments, he needed a job that did not require as much walking or heavy cart-pushing. Eurofresh said they had no other jobs available. He eventually was given a job at the prison in the motor pool; his new job paid him only fifty cents an hour. He sued, alleging that both the prison and Eurofresh violated the Americans with Disabilities Act (ADA) by

failing to provide him with reasonable accommodations.

The Court said that the ADA protects people from discrimination by their employers on the basis of their disability. Eurofresh could not be found to have violated the ADA in this case, the Court said, because Eurofresh was not Castle's employer. Castle's "labor belongs to the State of Arizona, which put him to work at Eurofresh in order to comply with its statutory obligations." But the state may be liable. The Court of Appeals remanded that issue to the trial court.

The case is Castle v. Eurofresh and Arizona Department of Corrections, 731 F.3d 901 (9th Cir. 2013).

Fake Service Dog Gear Creates Problems

Under the Americans with Disabilities Act (ADA), businesses are required to allow people with disabilities to be accompanied by their service dogs. There is no formal process of certification for service dogs, and that has led to some abuses.

According to Disability Scoop, people who want to keep their pets (not service dogs) with them are buying service animal vests and fake certificates for their dogs so they can pass as service animals. If you search for "service dog patches" on eBay, you will

find 22,421 entities selling them. Businesses may ask if the animal is required because of a disability and what tasks it has been trained to perform, but they cannot require any formal proof about the person's disability or the amount of training the dog has received.

This can lead to people having dogs with them in restaurants that whine, scratch, bark or otherwise misbehave, something that true service dogs rarely do. Such behavior may make businesses less receptive to allowing true service dogs into the premises.

Canine Companions for Independence, which breeds and trains service dogs, has launched an online petition asking the U.S. Department of Justice to take some sort of action. It is unclear what action could be taken that would curb abuses but not overburden people with disabilities who have legitimate service dogs.





BHRC Essay/Art Contest Winners Announced

The BHRC recently announced the winners of its 23rd annual essay/art contest. The 2014 theme was "Choose Civility: The Best Examples I've Seen of People Being Considerate to Others."

The essay winners at the younger student level were first place, Catherine Maria Stanton, grade 4, Templeton; second place, Brooke Liao, grade 2, Childs and third place, Coleman C. Oliphant, grade 4, University. The essay winners at the older elementary level were first place, Kira Kunzman, grade 6, University; second place, Maggie Doyle, grade 6, Childs and third place, Samuel Carlson, grade 5, Templeton.

The art winners at the younger student level were first place, Austin Spier, Grade 2, Childs; second place, Lisa Rodriguez, grade 4, Templeton and third place Alex Herran, grade 2, Childs. The older student art winners were first place, Childs' fifth grade students, second place, Sofia Bolda, grade 5, Templeton and third place, Tess Babcock, Grace Bennett, Peter Storm, Katrine Bruner, grade 6, and Eliza Henne, grade 5, Templeton. Congratulations to all of these students.

Thanks to the following businesses for their donations: Optiks, Cassady Electrical Contractors, Avers Pizza and Michael's Uptown Café.

The judges for the contest were Beth Applegate, Michael Molenda, Birk Billingsley and William Morris. Thanks to these commissioners for performing this difficult task.

The awards ceremony is March 27, 2014 at 4:30 p.m. in the Council Chambers at Showers City Hall. Mayor Mark Kruzan will present the winners with their prizes.



BHRC Human Rights Winner Announced

The BHRC chose David Metheny as the recipient of its 13th annual Human Rights Award.

Metheny, a Bloomington resident, was chosen as a tribute to his advocacy for low-income tenants, many with disabilities. When Metheny learned that the apartment complex he lived in would no longer accept Section 8 vouchers, which would have resulted in approximately 60 low-income residents being displaced, he worked tirelessly to find a solution.

Despite his own health problems, Metheny spent several months contacting various agencies for information and assistance and eventually sought legal recourse through Indiana Legal Services for all of the Section 8 tenants. He also brought the matter to the attention of the Herald-Times, which published an article that brought additional attention to the situation.

In spite of many dead ends and frustrating setbacks, Metheny persisted in his efforts until the apartment complex agreed to honor the leases of residents

with Section 8 vouchers. Susie Rimstidt, then with Southern Indiana Center for Independent Living, nominated Metheny, saying "I feel that David Metheny is an excellent nominee for the Bloomington Human Rights Award for Housing. He did significantly contribute to improving the civil rights of numerous low-income persons, many with disabilities."

The award will be presented to Metheny at a city council meeting in the spring.



Commission on the Status of Women Announces Recipients for 2014 Women of the Year Awards

Mayor Mark Kruzan announced that three local women will be honored during March for their outstanding service to our community. Karen Green Stone has been named Bloomington's Woman of the Year, Georgia Schaich has been named recipient of the Lifetime Contribution Award and Debra Morrow has been chosen to receive the Emerging Leader Award.

The recipients were selected by members of the Woman of the Year Subcommittee of the City of Bloomington's Commission on the Status of Women. The Woman of the Year and Lifetime Contribution Award recipients will be honored at the Women's History Month Luncheon, which will be held on Wednesday, March 26, at 12:15 p.m. at the Bloomington-Monroe County Convention Center, 302 S. College Ave. Organizations for women and women-owned businesses will exhibit at the luncheon. Doors open at 11:15 a.m. for viewing of women's exhibits. Seats for the lunch must be purchased in advance at \$20.00 each.

The theme of this year's event is "Celebrating Women of Character, Courage and Commitment." Deborah Hearn Smith will be the keynote speaker at the luncheon. Smith is the Chief Executive Officer of Girl Scouts of Central Indiana.

The Emerging Leader recipient was honored at the Women's Leadership Development event, which was held on March 13.

Woman of the Year Karen Green Stone is a fearless advocate for health care. She is co-founder and active member of Hoosiers for a Commonsense Health Plan, which has been instrumental in educating the public and making health insurance and health care available to all families, children and individuals in Indiana. Stone is also an artist and helped to organize the Local Clay Potter's Guild in 1997. She has been president of the guild for 17 years and is a key board member and organizer of the Soup Bowl Benefit, now in its 20th year and currently the main fundraiser for the Hoosier Hills Food Bank.

Lifetime Contribution Award winner Georgia Schaich has dedicated her life to serving others and championing causes that make Bloomington a more senior-friendly community. Her career in working with seniors began at Hospitality House (Garden Villa) where she was employed as the Activities Director from 1984 to 1989. From 1989 to 2005, she was the director of the Retired Senior Volunteer Program for the Area 10 Agency on Aging. In 1993, Schaich helped create the first TRIAD Council in Indiana to help raise seniors' awareness of crime and ways of protecting themselves. She joined the

Commission on Aging in 2010 and has served on committees to organize the annual Creative Aging Festival and design Emergency Disaster Support for Elders.

The 2014 Emerging Leader, Debra Morrow, has worked tirelessly to help others overcome their barriers to social mobility. Morrow is the Community Services Coordinator at Middle Way House and places up to 300 volunteers annually. She is also a volunteer at New Leaf and works with women transitioning from jail to the community by providing them with information about housing, social services and employment. She has been instrumental in developing programs for the jail and has been a strong advocate on behalf of all incarcerated women. Morrow has also volunteered at the Shalom Center and has been involved with local efforts to end homelessness. She is a volunteer with Monroe County Chapter of Prevention of Child Abuse Indiana and is the Broadview Neighborhood Association President.

For more information, contact Community and Family Resources Program Specialist Sue Owens at 349-3468 or owenss@bloomington.in.gov.